

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TYRONE HOLMAN,

Defendant.

Case No. 01-cr-40017-JPG-4

MEMORANDUM AND ORDER

This matter comes before the Court on Defendant Tyrone Holman's *Pro Se* Motion (Doc. 573) for Leave to Pursue Relief under Title 18 U.S.C. § 3582(c)(2) and Motion for Counsel. However, the relief that the Defendant is seeking is only available through a motion pursuant to 28 U.S.C. § 2255.

The Court is hesitant to construe this as a § 2255 motion without a clear indication that Holman intends to invoke that statute. “[T]he court cannot so recharacterize a pro se litigant’s motion as the litigant’s first § 2255 motion unless the court informs the litigant of its intent to recharacterize, warns the litigant that the recharacterization will subject subsequent § 2255 motions to the law’s ‘second or successive’ restrictions, and provides the litigant with an opportunity to withdraw, or to amend, the filing.” *Castro v. United States*, 540 U.S. 375, 377 (2003).

It is also noted that the Defendant has filed a previous 28 U.S.C. § 2255. *See Holman v. USA*, 03-cv-004226-JPG. In order for the Court to consider a successive petition, the Seventh Circuit Court of Appeals must certify the successive petition pursuant to 28 U.S.C. § 2255(h).

Curry v. United States, 507 F.3d 603, 604 (7th Cir. 2007); *Nunez v. United States*, 96 F.3d 990, 991 (7th Cir. 1996).

Therefore, the Court **WARNS** Defendant Holman that if he does not file a motion to withdraw his pending motion (Doc. 573) on or before **February 22, 2016**, the Court will construe it as a § 2255 motion and Holman will then be subject to the second or successive filing requirements contained in 28 U.S.C. § 2255, ¶ 8.

IT IS SO ORDERED.

DATED: 1/27/2016

s/J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE